



#9
UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

In re Application of: :
Osamu Yokomizo et al :
SERIAL NO. 08/470,424 :
FILED: June 6, 1995 :
FOR: FUEL ASSEMBLY AND NUCLEAR :
REACTOR :

DECISION ON PETITION
UNDER 37 CFR §1.181

MAILED

DEC 31 1996

DIRECTOR
GROUP 2200

The petition filed July 30, 1996 is being treated as a petition under 37 CFR §1.181 for review of the examiner's requirement for restriction and issuance of a complete Office action. Applicants request that a new requirement for restriction be issued including newly added claims 24-29.

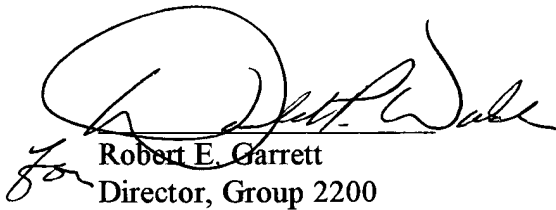
BACKGROUND

The above application was filed on June 6, 1995 containing claims 1-23 directed to multiple species of the claimed invention. On February 29, 1996 a requirement for election of a single disclosed species for prosecution was mailed. On March 29, 1996 applicants elected a single species with traverse. On June 14, 1996 applicants by supplemental amendment added claims 24-29 to the application. On July 5, 1996 an Office action further restricting between the multiple species of claims 1-23 as originally filed and the method of newly submitted claims 24-29 was given. An action on the merits of the elected species was given at this time and claims directed to non-elected species and/or inventions were withdrawn from further consideration. Applicants contend that the withdrawal of claims 24-29 from consideration is improper and that a complete Office action containing a new restriction requirement including new claims 24-29 be issued.

DECISION

A review of the record indicates that newly submitted claims 24-29 were properly considered and found not to be readable on the elected species. Applicants' arguments as to what constitutes an Office action in determining claims as "originally" filed for restriction purposes are moot in view of the fact that an election had already been made on March 29, 1996, prior to the submission of claims 24-29. MPEP 809.02(a) is controlling once an election has been made. The Office action of July 5, 1996 is considered complete in that all claims currently of record were considered and an action on the merits of only those claims readable on the elected species given. Claims 24-29 were not readable on the elected species in that they were directed to a separate invention and were properly withdrawn from further consideration.

Petition is DENIED.



Robert E. Garrett
Director, Group 2200